

STAFF REPORT

**ADMINISTRATIVE CIVIL LIABILITY ORDER
FOR
MR. NICK PETSAS
LAKE BERRYESSA ENTERPRISES, INC. II
dba PUTAH CREEK RESORT
NAPA COUNTY**

Introduction

Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort (hereby known as "Discharger") own and operate the Putah Creek Resort concession at 7600 Knoxville Road in Napa County. The Discharger's wastewater system is regulated by Waste Discharge Requirements (WDRs) Order No. 5-00-020, which prescribes requirements for treatment and disposal of up to 100,000 gallons per day (gpd) of domestic wastewater to three percolation/oxidation ponds.

The Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. R5-2004-0539 because the Discharger failed to submit certain technical reports required pursuant to California Water Code (CWC) Section 13267. The Discharger has not paid the \$15,000 ACLC and therefore this matter has been brought to the Regional Board.

Historical Overview

The Putah Creek Resort consists of approximately 150 mobile homes, a 27 unit motel, 80 campsites, a store, a restaurant, a boat launch, and dock facilities. The Discharger has had a long history of violations of its WDRs, which include the lack of submittal of self-monitoring reports and technical reports, wastewater discharges and overflows to Lake Berryessa and surface water drainage courses, and failure to implement system upgrades and measures to ensure compliance with the WDRs. The Regional Board has previously adopted a number of enforcement actions against the Discharger, including an ACL Complaint and a Cleanup and Abatement Order in 1998 for several wastewater overflows to surface waters and for failure to submit technical and monitoring reports required by CWC Section 13267, and an ACL Order in 2002 for discharges of wastewater to surface waters. As a result of the ACLs, the Discharger paid \$10,500 and \$23,500 to the State Water Resources Control Board Cleanup and Abatement Account.

Recent Violations

The most recent issues at Putah Creek Resort began on 4 February 2004, when staff issued a Notice of Violation (NOV) for the non-submittal of groundwater monitoring reports as required by Monitoring and Reporting Program (MRP) No. 5-00-020. The MRP requires the Discharger to develop a system of at least four groundwater monitoring wells to define groundwater impacts from the percolation/oxidation ponds. However, the wells have never been installed, and therefore the Discharger is not submitting the groundwater monitoring reports required by the MRP. Therefore, the NOV required the Discharger to submit a Groundwater Monitoring Well Installation Workplan by 1 June 2004 and a Groundwater Monitoring Well Installation Report by 1 August 2004.

Staff performed an inspection of the wastewater system on 11 March 2004 and made the following observations: (a) freeboard was between 1.5 and 2 feet in each of the three wastewater ponds, (b) wastewater seepage was observed from the northeast berm of Pond No. 1, and (c) severe erosion was evident along the north embankment of Pond No. 1, and was covered by plastic sheeting. Following the inspection, on 12 March 2004, staff issued a NOV for the violation of Discharge Specification Nos. B.3,

B.11, and B.15 of the WDRs. The NOV required the Discharger to: (a) perform daily pond freeboard measurements and inspect each of the pond berms for the presence of seepage, (b) submit a Contingency Plan describing steps taken if wastewater encroaches to within two feet of freeboard in any pond, (c) submit a Short-Term Berm Improvement Report describing measures that have been taken to prevent catastrophic failure, as well as seepage and erosion, in the berm surrounding Pond No. 1, and (d), submit a Long-Term Berm Improvement Workplan proposing activities and timelines for permanent repairs to the berm surrounding Pond No. 1, and if necessary, the berms surrounding Pond Nos. 2 and 3.

In response to the NOV, on 22 March 2004, the Discharger began submitting the weekly pond inspection reports, and on 23 March 2004, staff received the Contingency Plan. The Contingency Plan stated that the Discharger would implement the hauling of wastewater only in the event that the freeboard in the ponds decreased to one-foot. (It is noted that the Contingency Plan does not comply with the WDRs, as they require a minimum of two-feet of freeboard). The Plan also stated that the berm conditions appeared to be the same as when they were repaired in the fall of 1999 (as required by CAO No. 98-736), and that a further evaluation would be completed by 16 April 2004.

On 16 April 2004, staff received the Short-Term Berm Improvement Plan, which provided a brief summary of actions implemented by the Discharger, including (a) the fact that the Discharger discussed the berm slope design with a consultant familiar with the facility's berms, (b) a site visit with the contractor to discuss potential corrective actions, (c) reinstallation of the black sheeting covering the Pond No. 1 embankment, and (d) excavation of the seepage area below Pond No. 1 and the installation of a mortar dam and perforated drain pipe connecting to the overflow piping from Pond No. 1 to Pond No. 2. Staff then received the Long-Term Berm Improvement Workplan on 16 May 2004 which provided a schedule of tasks that included: (a) the installation of borings in the berms by 1 August 2004, (b) the installation of a bentonite seal around the pipe within the Pond No. 1 berm by 1 August 2004, (c) the evaluation of boring results in regard to berm stability and installation of monitoring wells by 1 September 2004, (d) the installation of vegetative protection mats on the berm of Pond No. 1 by 1 October 2004, and (e), the on-going monitoring the growth of the vegetative mats.

On 1 June 2004, staff received a draft Groundwater Monitoring Well Installation Workplan. The document, however, did not actually propose the installation of groundwater monitoring wells, but instead stated that locations of the wells had not been determined because of the substantial amount of bedrock underlying Pond Nos. 1 and 2 and the lack of a groundwater table.

On 13 July 2004, staff met with the Discharger to discuss a number of issues. Staff again stated that the Discharger must monitor the groundwater to determine compliance with the Groundwater Limitation of its WDRs. The Discharger indicated that the geologic information obtained during the soil boring investigation would be used to help determine the locations of the groundwater monitoring wells. Staff also stated that the Discharger must submit a formal water balance to determine whether the three ponds provide enough capacity, and if not, then Pond No. 4 (as described in the Findings of the WDRs) must be constructed.

Due to the seriousness of the current violations, and previous lack of compliance, the Executive Officer memorialized the due dates for each technical report in a CWC Section 13267 Order which was issued

on 30 July 2004. The Discharger was required to submit the following: (a) by 1 September 2004, a technical report describing the installation of the vegetative mats on the berm of Pond No. 1, (b) by 1 September 2004, a water balance that demonstrates whether or not the facility contains adequate storage and disposal capacity to ensure full compliance with the WDRs, (c) by 1 September 2004, written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed, (d) by 30 September 2004, a technical report discussing results of at least four soil borings drilled within/around the Pond No. 1 berm, (e) by 15 October 2004, a report describing measures taken to repair the low area in the berm of Pond No. 2, (f) by 15 October 2004, a revised Groundwater Monitoring Well Installation Workplan, and (g) if the water balance showed inadequate capacity, then by 15 October 2004, plans and a timeline for increasing the capacity.

On 26 August 2004, staff conducted an inspection of the facility and observed the drilling of four soil borings within the berms of the ponds. Staff also noted that a portion of the irrigation piping along the berm between Pond Nos. 1 and 2 was in place; however the vegetative matting had not been installed. Following the inspection, staff sent the Discharger an inspection report on 10 September 2004 that reminded the Discharger that staff had not yet received the three technical reports that were due by 1 September 2004.

On 13 September 2004, the Discharger submitted a request to extend the due date for both the installation of the vegetative mats on the berm of Pond No. 1, and the installation of the bentonite seal around the overflow piping in the berm at Pond No. 1. The Discharger stated that no effort had been made toward the installation of the vegetative mats and that within 30 days following receipt of the technical report discussing the results of the soil borings, or by 15 October 2004, the mats would be installed. In addition, the Discharger stated that since the overflow piping was currently above the pond water line, no seepage would occur under current conditions and if the wastewater increased above the overflow piping then a perforated pipeline would intercept any seepage from the pond and redirect that seepage through a closed pipe into Pond No.1. Based on this, the Discharger stated that there was no urgency of installing the bentonite seal. Staff verbally told the Discharger's consultant that an extension to submit the reports was not warranted.

The Discharger submitted the required water balance; however staff determined it to be incomplete. On 18 October 2004, staff informed the Discharger's consultant that the water balance was incomplete and needed to be resubmitted as soon as possible. To date, it has not been re-submitted and staff are unable to determine whether the Discharger has enough storage capacity for all the wastewater generated during a wet winter.

To date, the Discharger has not submitted five of the technical reports as required by the 30 July 2004 CWC 13267 Order. Those reports include: (a) a technical report describing the installation of the vegetative mats on Pond No. 1 berm, (b) written documentation that the bentonite seal around the overflow piping in the berm at Pond No. 1 was installed, (c) a technical report discussing results of at least four soil borings drilled within/around the Pond No. 1 berm, (d) a report describing measures taken to repair the low area in the berm of Pond No. 2, and (e), the revised Groundwater Monitoring Well Installation Workplan.

Administrative Civil Liability Complaint

The Discharger has violated CWC Section 13267 by not submitting the required technical reports, and is subject to a civil liability action. On 22 October 2004, the Executive Officer issued Administrative Civil Liability Complaint No. R5-2004-0539 for \$15,000 to Mr. Nick Petsas and Lake Berryessa Enterprises, Inc. II, dba Putah Creek Resort. The ACLC required that payment be made by 11 November 2004, or a hearing would be scheduled before the Regional Board. The Discharger has since requested a hearing.

In determining the amount of any civil liability pursuant to CWC Section 13327, the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

These factors were considered as follows:

Nature and Circumstances

The nature of the violation is that the Discharger was required, pursuant to CWC Section 13267, to submit five technical reports. These reports are necessary to show that the Discharger has made several improvements to its wastewater storage ponds, to describe whether the berm on Pond No. 1 is stable, and to propose the installation of groundwater monitoring wells to determine whether the discharge complies with the Groundwater Limitation. The circumstances are such that the Discharger was aware of the necessity to provide the required technical reports, but failed to do so.

Extent

The extent of the violation is that the Discharger was required, pursuant to CWC Section 13267, to submit those five technical reports described above. These five technical reports have not been submitted to date. As of 3 December 2004, these reports will be a total of 305 days late.

Gravity

The gravity of the violation is that (a) failure to install the vegetative mats on the berm of Pond No. 1 will allow the berm to continue to erode and possibly fail, (b) failure to install the bentonite seal around the overflow pipe will allow wastewater to continue to seep out of Pond No. 1, (c) failure to submit the results of the soil borings hinders staff's ability to determine whether the eroded berm has a high probability of catastrophic failure and whether the Discharger must stabilize the berm, (d) failure to repair the low area in berm of Pond No. 2 results in less storage capacity and the possibility of wastewater overflows, and (e) failure to submit a groundwater monitoring well installation workplan and construct groundwater monitoring wells has prevented staff from evaluating whether the discharge of waste to these evaporation/percolation ponds is degrading the groundwater.

Ability to Pay/Continue in Business

With respect to the violator, it has not been demonstrated that there is an inability to pay or to continue in business. The Discharger had the opportunity to provide such information according to the notice of public hearing.

Voluntary Cleanup Efforts Undertaken

This ACL Order addresses failure to submit technical reports and, therefore, this factor is not relevant. However, the Discharger is required to submit the technical reports to comply with waste discharge requirements in order to avoid additional discharges of waste.

Degree of Culpability

The Discharger is responsible for the submittal of the five technical reports and is culpable for the violations cited. Staff attempted to work voluntarily with the Discharger in this matter; however, due to the Discharger's prior history of noncompliance, felt it appropriate to memorialize the due dates for each technical report in a CWC Section 13267 letter. That letter clearly describes the penalty for non-compliance.

Economic Savings

By failing to submit the required RWD, the Discharger has realized an economic savings by delaying the expenditure of funds necessary to complete the required technical reports and any needed improvements to the wastewater treatment system. The Discharger must still submit the technical reports and make the improvements, so the economic savings is simply the interest it has saved on any loans. Staff estimates that the Discharger accrued no more than \$500 in savings due to non-submittal of the technical reports.

Other Matters as Justice May Require

Staff spent approximately 60 hours, or \$4,800 in staff costs, in generation of the ACL Complaint, including inspection of the facility and review of the files. Staff estimate that they will incur another 60 hours of work (another \$4,800) to prepare the agenda material for the ACL Order and to prepare for the Regional Board presentation.

Prior History of Violations

The Discharger has a long history of violations at this facility, and has been previously issued a \$10,500 ACL Complaint (July 1998), a Cleanup and Abatement Order (December 1998), and a \$23,500 ACL Order (June 2002).

Determination of Amount

Water Code Section 13268 authorizes the imposition of administrative civil liability for violation of Water Code Section 13267. The maximum liability for each day of violation is one thousand dollars (\$1,000). As of 3 December 2004, the required technical reports will be a cumulative total of 305 days late. Therefore, the total maximum administrative civil liability amount available to the Regional Board for the violations noted in the Complaint is \$305,000. No minimum liability is required to be imposed under Section 13268(b)(1).

Response by the Discharger

On 4 November 2004, the Discharger responded to the ACL Complaint by stating that an "update report" had been submitted on 1 September 2004 (although it was not received until 13 September 2004), and that therefore the Discharger had complied with the CWC Section 13267 Order. The Discharger also requested a hearing before the Board. The Discharger is correct in stating that it did

submit a progress report; however, this document only pertains to three of the required five reports (regarding the vegetative mats, bentonite seal, and low area in Pond No. 2). The CWC Section 13267 Order clearly states that the reports concerning the vegetative mats, bentonite seal, and low area in Pond No. 2 shall document that the physical improvements have been completed. The “update report” specifically states that the Discharger has not completed the physical improvements and requests another time extension. The remaining two overdue reports are not addressed in the “update report.” The Discharger has not complied in any manner with the CWC Section 13267 Order.

Summary

The failure to submit the technical reports has grave consequences, as the lack of action may lead to catastrophic failure of a pond berm, continuing seepage from Pond No.1, a lack of wastewater storage capacity in Pond No. 2, and the inability to determine whether the discharge is degrading the groundwater. Even if the Discharger submits the required technical reports prior to the Board hearing, it is still appropriate for the Regional Board to adopt an ACL Order due to the Discharger’s failure to comply with the CWC Section 13267 Order. There are on-going compliance issues at this facility, not the least of which is whether the three ponds have enough capacity to treat, store, and dispose of the wastewater. It is imperative that the Discharger comply with all directives of the Board, including submitting technical reports in a timely manner.

The Executive Officer issued the Administrative Civil Liability Complaint in the amount of \$15,000, and staff recommends that the Board adopt an ACL Order for this same amount.

GJC/WSW: 18-Nov-04

3 December 2004 Board meeting of the Central Valley Regional Water Quality Control Board